IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 71 OF 2004

Jayantilal Tarachand Oswal ..Petitioner
Vs.
Ashok Narayan Pawar ..Respondent

Mr. S.V. Sadavarte for Petitioner.
Mr. Sanjay Kshirsagar for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 13, 2005.

P.C.:

1. Heard Mr. Sadavarte, the learned counsel for the petitioner and Mr. Kshirsagar, the learned counsel for the respondent.

2. The present respondent is the plaintiff in R.C. Suit No.853/2003 and in the same the defendant i.e. the present petitioner filed an application at Exh.43 raising the issue of jurisdiction of the trial court to entertain the suit and, therefore, the trial court framed the preliminary issue of jurisdiction below Exh.1. By the impugned order dated 12/3/2004 the preliminary issue has been answered in the affirmative i.e. against the defendant.

3. The prayers in the suit are based on the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and the plaintiff was seeking declaration that the agreement dated 6/3/2003 allotting 450 sq.ft. shop inclusive of the loft was illegal and he was entitled to for the shop admeasuring 450 sq.ft. exclusive of the loft. In view of the prayers as set out in para 22 of the plaint, the trial court noted that the suit was not for exercising the rights of a tenant under the Tenancy Act and on the contrary the plaintiff was seeking declarations under the Maharashtra Ownership Flats Act. The said reasoning cannot be termed as perverse or erroneous so as to call for interference in the impugned order by exercising the revisional jurisdiction. Hence, the challenge to the said order is devoid of merits.

4. The Civil Revision Application is rejected summarily. Ad-interim order, if any, stands vacated.

(B.H. Marlapalle,J.)